

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

THOMAS EDWIN LODEN, JR.

PETITIONER

v.

No. 1:10CV311-WAP

CHRISTOPHER EPPS, ET AL.

RESPONDENTS

**ORDER APPOINTING COUNSEL, GRANTING MOTION TO PROCEED *IN FORMA*
PAUPERIS, AND REQUIRING SUBMISSION OF BUDGET**

Presently before the Court are Petitioner's motions for the appointment of counsel¹ and to proceed *in forma pauperis*². Upon due consideration, the Court finds the motions well-taken and grants Petitioner's requests.

Factual Background

Petitioner was convicted of the June 22, 2000, sexual battery, rape, and capital murder of Leesa Marie Gray. Following Petitioner's waiver of a jury trial and jury sentencing, Judge Thomas J. Gardner, III, sentenced him to die by lethal injection. Petitioner's claims of error on direct appeal and post-conviction review were rejected, and he now seeks federal habeas relief.

Motion to Proceed *In Forma Pauperis*

Upon consideration of the Petitioner's application for leave to proceed *in forma pauperis*, submitted pursuant to 28 U.S.C. § 1915, the court finds that Petitioner's motion is well-taken and should be **GRANTED**.

¹ Docket entry no. 1.

² Docket entry no. 2.

Motion for Appointment of Counsel

A state prisoner facing a death sentence has a qualified statutory right to the appointment of counsel in connection with a federal habeas corpus proceeding challenging his criminal conviction and death sentence.³ Petitioner requests this Court appoint counsel to represent him in this case under Title 18 U.S.C. Section 3599 and the Supreme Court's holding in *McFarland v. Scott*, 512 U.S. 849, 854-59(1994). The Court shall grant Petitioner's request.

The Court finds that Stacy Ferraro qualifies for appointment as lead counsel for federal habeas actions as set forth in Title 18 U.S.C. § 3599. The Court further finds that good cause exists for appointing Mark R. McDonald, Charles E. Patterson, and Charles S. Barquist as *pro bono* counsel of record in this cause. Accordingly, Petitioner's application for appointment of counsel is **GRANTED** as follows:

Stacy Ferraro, whose mailing address is Post Office Box 708, Flora, Mississippi, 39071 is appointed local counsel of record for Petitioner in these habeas corpus proceedings. The Clerk shall send Stacy Ferraro a copy of this Order and all forms and vouchers necessary to obtain reimbursement for expenses and payment for attorneys fees for services rendered in connection with this cause. Attorneys Mark R. McDonald, Charles E. Patterson, and Charles S. Barquist, whose mailing address is Morrison & Foerster LLP, 555 West Fifth Street, Los Angeles, California, 90013-1024, are appointed *pro bono* and *pro hac vice* to represent Petitioner in his federal habeas proceedings.

Petitioner shall file and serve on the Mississippi Attorney General his federal habeas corpus petition in this cause on or before the limitations deadline imposed by the Antiterrorism

³ *Sterling v. Scott*, 57 F.3d 451, 454 (5th Cir. 1995), *cert. denied*, 516 U.S. 1050 (1996).

and Effective Death Penalty Act of 1996 (AEDPA). *See* 28 U.S.C. § 2244(d). The petition shall include all grounds for federal habeas corpus relief that he wishes this Court to consider in connection with his capital murder conviction and death sentence.

SO ORDERED, this the 1st day of December, 2010.

/s/ W. Allen Pepper, Jr.

W. ALLEN PEPPER, JR.

UNITED STATES DISTRICT JUDGE